

MEMORANDUM OF LAW

DATE: February 23, 1993

TO: David Allsbrook, Centre City Development Corporation

FROM: City Attorney

SUBJECT: Tattoo Parlors in the Gaslamp Quarter

This Memorandum of Law concerns the presence of tattoo parlors in the Gaslamp Quarter and confirms our prior telephone conversation.

Issue

The specific issues you have asked me to research are whether tattoo parlors are a permitted use pursuant to the Gaslamp Planned District Ordinance (codified in San Diego Municipal Code section 103.0400 et seq.), and if not, what can be done to revoke a previously issued special use permit.

Background

Early in 1991, the City Architect's office, then the permitting authority in the Gaslamp Quarter, issued two Gaslamp special use permits for tattoo parlors in the Gaslamp Quarter. One was for Tiger Jimmy Tattoo Studio at 519 Broadway and the other was for Master Tattoo/Tattoo Art located at 944 Fifth Avenue.

Discussion

The Gaslamp Planned District Ordinance (the "PDO") outlines what uses are permitted in the Gaslamp Quarter. While not specifically mentioning tattoo parlors in the PDO, it was the decision of the City Architect to issue the permits because both establishments could be characterized as art studios. Municipal Code section 103.0408 states:

In the Gaslamp Quarter
Redevelopment Project Area, no
building or improvement . . . shall
be erected . . . nor shall any
premises be used except for one or
more of the following purposes:

A. . . .

. . . .

43. Studios for
art, dance and music.
Excluding any establishment
listed and defined in the
Adult Entertainment
Ordinance.

Webster's Third New International Dictionary defines a studio as "the working place of a creative worker (as a painter or sculptor)." While tattoo applicators may not be thought of as artists in the traditional sense, certainly an argument can be made that they are "creative workers" and the tattoo parlors could be considered art studios.

However, if the tattoo parlors were "adult entertainment establishments" as defined by the Adult Entertainment Ordinance (codified in San Diego Municipal Code section 101.1800 et seq.), they would not be permitted under Municipal Code section 103.0408(A)(43).

"Adult entertainment establishments" are defined in Municipal Code section 101.1801.3. It reads in pertinent part:

An adult entertainment
establishment is any place of
business at which one or more of the
following activities is conducted.

. . . .

K. BODY PAINTING STUDIO

Any establishment or business
which provides the service of
applying paint or other substance
whether transparent or nontransparent
to or on the human body when such
body is wholly or partially nude in
terms of "specified anatomical
areas."

The term "specified anatomical areas" is specified in Municipal Code section 101.1801.1 as follows:

As used herein, "specified
anatomical areas" shall mean and
include any of the following:

- (a) Less than completely and
opaquely covered human genitals,
pubic region, buttocks, anus or
female breasts below a point
immediately above the top of the
areolae; or
- (b) Human male genitals in a

discernable turgid state, even if
completely and opaquely covered.

Taken together, these code sections indicate that tattoo parlors that applied tattoos to the "specified anatomical areas" would be considered "adult entertainment establishments" and their use would not be permitted in the Gaslamp Quarter Redevelopment area.

Conclusion

Obviously, a factual determination would have to be made as to whether Tiger Jimmy Tattoo Studio and Master Tattoo/Tattoo Art would be considered "adult entertainment establishments." If they were, the special use permits could be revoked pursuant to the provisions of Municipal Code section 103.0403(H)(3) which deals specifically with revoking such permits in the Gaslamp Quarter Redevelopment Area.

If you have any questions, or wish to discuss this further, please call me at your convenience.

JOHN W. WITT, City Attorney

By

Allisyn L. Thomas

Deputy City Attorney

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